

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

Residency of D. Doe

INTERIM ORDER DECISION

HELD: Parents of D. Doe seek to maintain the student's special education placement in the public schools of East Greenwich. The petition for an Interim Order is denied and dismissed.

DATE: January 28, 2013

Travel of the Case and Jurisdiction

This is a petition for an interim order filed by a student's parents seeking to maintain the student's special education placement in the public schools of East Greenwich. Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2 and R.I.G.L. 16-39-3.2

Position of the Parties

East Greenwich

East Greenwich contends that it is not obligated to provide special education services to the student in this matter since the student now resides in North Kingstown for school purposes. In Re: Residency of W. Doe, Commissioner of Education, August 27, 2012 (0014-12)

North Kingstown

While North Kingstown initially indicated outside of the present hearing that it could not provide an in-district special education program to this student, North Kingstown has now indicated on the record before the Commissioner that it can, in fact, provide the required special education services on an in-district basis.

Position of the Parents

The parents contend that the student's present special education placement must be maintained in the East Greenwich school system.

Findings of Fact

We find that the only material factual dispute in this case is whether or not North Kingstown can provide to this student special education services which are comparable to the special education services the student is presently receiving in East Greenwich. Since we find that this issue must be remitted to the special education hearing officer who has been appointed to decide this case on the merits, we do not address this issue here. However, for purposes of the instant matter, we proceed to decide this case on the applicable law alone.

Discussion and Conclusions of Law

In a prior decision of the Commissioner of Education it was determined that the petitioners' son was no longer a resident of East Greenwich for school purposes but rather was a school resident of North Kingstown. In Re: Residency of W. Doe, Commissioner of Education, August 27, 2012 (0014-12) in pertinent part the law at R.I.G.L. 16-64-2 provides as follows:

***R.I.G.L. 16-64-2. Retention of residence.**—A child shall be eligible to receive education from the city or town in which the child's residence has been established until his or her residence has been established in another city or town and that city or town has enrolled the child within its school system, unless the commissioner..., pursuant to R.I.G.L. 16-64-6, has ordered otherwise.*

Given the literal language of the above quoted statute and the Commissioner's prior decision finding that the petitioners' son is now a resident of North Kingstown for school purposes, we are constrained to find that the petitioners' son must now be enrolled in the North Kingstown school system. In reaching this decision we acknowledge that the petitioners' son has significant special education needs and that these needs, in the opinion of the petitioning parents, are being met under an individual education program (IEP) offered by the East Greenwich school system. We find, however, that the IEP services that the student is presently receiving in East Greenwich must now be provided in the North Kingstown school system pursuant to R.I.G.L.16-24-1(e), which provides: "In those cases that an individual education plan has been adopted for a child and the child moves to another town or city, the plan shall remain in effect until a new plan is adopted for the child in the new town or city." Moreover, pursuant to 20 U.S.C 1414 (C) (i) (I), it is provided:

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another state, the school district shall provide such child with a free appropriate public education, including services comparable to those described in the previous IEP, in consultation with the child's parents until such time as the district conducts an evaluation, if determined to be necessary, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

We conclude that the student's interest in educational stability is adequately protected by both state and federal law. It is true that the special education director in North Kingstown confused this matter by initially stating some days ago that North Kingstown was not in a position to comply with the student's East Greenwich IEP. However, through counsel and through sworn testimony before the Commissioner of Education, the North Kingstown special education director has indicated that North Kingstown is able to comply with the student's East Greenwich IEP. While counsel for the petitioners has indicated skepticism towards this statement, we accept the assertion of the special education director of North Kingstown that services comparable to those services contained in the student's East Greenwich IEP can be provided in North Kingstown. We remit to the appointed special education hearing officer in this matter all questions relating to comparability of the special education services that will be provided to this student.

Conclusion

The petition for an interim order is denied and dismissed.

For the Commissioner

Forrest A. Avila,
Hearing Officer

Deborah A. Gist, Commissioner

January 28, 2013
DATE